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May 29, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

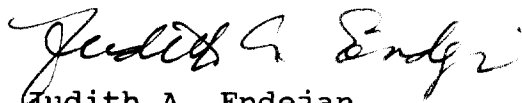
RE: In the Matter of Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Mr. Caton:

Attached please find the appropriate number of TRACER's Reply
Comments in the above-referenced proceeding. Please also find
attached copies of letters transmitting these Reply Comments to
the Chairman, fellow Commissioners, and Ms. Michele Farquhar,
Chief of the Wireless Telecommunications Bureau.

Best regards,

ATER WYNNE HEWITT DODSON & SKERRITT, P.C.



Judith A. Endejan
Counsel for TRACER

Enclosures

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May 29, 1996

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FCC TELECOM

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street NW, Room 814
Washington, D.C. 20554

RE: In the Matter of Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Chairman Hundt:

Enclosed please find a copy of TRACER's Reply Comments in the
above-referenced proceeding.

TRACER, an organization of large business users of
telecommunications services in the State of Washington, strongly
supports the Commission's tentative conclusion to adopt bill and
keep to govern interconnection compensation arrangements between
LECs and CMRS providers on an interim basis and urges the
Commission to take prompt action in this matter.

Should you or your staff have any questions regarding TRACER's
position in this matter, please do not hesitate to call me at
(206) 623-4711.

Best regards,

ATER WYNNE HEWITT DODSON & SKERRITT, P.C.

Judith A. Endejan

Judith A. Endejan
Counsel for TRACER

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May 29, 1996

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The Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 826
Washington, D.C. 20554

RE: In the Matter of Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Commissioner Barrett:

Enclosed please find a copy of TRACER's Reply Comments in the
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Best regards,

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Judith A. Endejan
Judith A. Endejan
Counsel for TRACER

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May 29, 1996

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The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, D.C. 20554

RE: In the Matter of Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Commissioner Chong:

Enclosed please find a copy of TRACER's Reply Comments in the
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(206) 623-4711.

Best regards,

ATER WYNNE HEWITT DODSON & SKERRITT, P.C.

Juith A. Endejan
Juith A. Endejan
Counsel for TRACER

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May 29, 1996

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The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 832
Washington, D.C. 20554

RE: In the Matter of Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Commissioner Ness:


Enclosed please find a copy of TRACER's Reply Comments in the
above-referenced proceeding.

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Best regards,

ATER WYNNE HEWITT DODSON & SKERRITT, P.C.


Judith A. Endejan
Counsel for TRACER

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Two Union Square
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May 29, 1996

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 802
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

RE: In the Matter of Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Commissioner Quello:

Enclosed please find a copy of TRACER's Reply Comments in the
above-referenced proceeding.

TRACER, an organization of large business users of
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Judith A. Endejan

Judith A. Endejan
Counsel for TRACER

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May 29, 1996

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Ms. Michele C. Farquhar
Chief, Wireless Telecommunications Bureau
1025 M Street, NW
Room 5002
Washington, D.C. 20554

RE: In the Matter of Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Ms. Farquhar:


Enclosed please find a copy of TRACER's Reply Comments in the
above-referenced proceeding.

TRACER, an organization of large business users of
telecommunications services in the State of Washington, strongly
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ATER WYNNE HEWITT DODSON & SKERRITT, P.C.


Judith A. Endejan
Counsel for TRACER

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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In the Matter of)

Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

REPLY COMMENTS OF THE TELECOMMUNICATIONS RATEPAYERS
ASSOCIATION FOR COST-BASED AND EQUITABLE RATES (TRACER)

Arthur A. Butler
Judith A. Endejan
Ater, Wynne, Hewitt,
Dodson & Skerritt, P.C.
Two Union Square
601 Union Street
Suite 5450
Seattle, Washington 98101-2327

Dated: May 29, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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In the Matter of)

Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

REPLY COMMENTS OF THE TELECOMMUNICATIONS RATEPAYERS
ASSOCIATION FOR COST-BASED AND EQUITABLE RATES (TRACER)

I. INTRODUCTION

On May 16, 1996 the Federal Communications Commission received extensive opening comments from many participants in the telecommunications market which urged the Federal Communications Commission (FCC) to enact rules and regulations to implement the Telecommunications Act of 1996¹ which, for the most part, promote their market interests. The Telecommunications Ratepayers Association For Cost-Based And Equitable Rates (TRACER) is an association of significant users of telecommunications services in Washington State and submits reply comments which promote the interest of consumers.

TRACER has a long history of intervening in proceedings similar to this one before the Washington Utilities and Transportation Commission ("WUTC"), arguing in favor of policies that encourage competition in the local exchange market and

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 [hereinafter 1996 Act].

prevent incumbent LECs from abusing their market power. TRACER members strongly believe that competition is capable of doing a better job than regulation of achieving public policy goals of lowering the prices consumers must pay, improving service quality and spurring greater innovation. However, in order for competition to be successful in achieving these goals, it is essential that rational interconnection policies be adopted. If new entrants are burdened with unnecessarily high interconnection costs, competition will effectively be precluded from providing any meaningful downward pressure on rates.

TRACER did not submit opening comments but has reviewed some, but not all, of the opening comments submitted in this docket.² TRACER's reply comments herein will not respond in specific detail to the comprehensive comments submitted by the telecommunications companies or organizations in the opening round, but will serve as a counterpoint, or response which presents a viewpoint not readily apparent in the opening comments. TRACER's voice as a telecommunications consumer needs to be heard amidst the din of competitive voices clamoring before the Commission in this docket. As consumers, the interests of TRACER members differ somewhat from those of existing or new telecommunications service providers. TRACER members advocate positions consistent with their beliefs that an effectively

² TRACER has reviewed the opening comments of US West, Inc., Nynex Telephone Companies, The Washington Independent Telephone Association, The Association For Local Telecommunications Services, Teleport Communications Group, Inc., AT&T Corp. and GTE Corporation.

competitive market will best protect consumers, even if some competitors fail. Therefore, in adopting rules to implement the Act, TRACER wishes to emphasize certain key points, which should underscore the rules which will emerge from this docket. These are:

1. The FCC should promulgate rules designed to actually produce the type of competition that will provide the ratepayer benefits intended by the Act.

The rules this Commission will adopt implementing Section 251 and 252 of the Act will be critical to the development of effective competition in the local exchange market. These rules should not be tilted to the advantage of either new entrants or existing providers, but instead should be designed to ensure that the interconnection and resale to be governed by these rules actually promote the public interest. For instance, Section 252(e)(2)(e)(i) mandates that interconnection, whether implemented by negotiated or mandated agreement must be "consistent with the public interest, convenience and necessity." This Commission, along with state regulatory bodies, is entrusted with protecting this interest and should test its rules against this public interest standard rather than against the economic interests of the parties in the new environment.

How should the FCC protect the public interest? In TRACER's view, the bottom line requires the Commission to test its rules to see if they deliver the true benefits of competition -- such as lower rates, more and better service options, and more rapid

deployment of technological advances. For instance, if the Commission's interconnection rules fail to exert downward pressure on rates, these rules should not be adopted.

2. TRACER favors the establishment of a preferred set of outcomes, consistent with Sections 251 and 252 to guide interconnection agreements.

TRACER agrees with several of the parties³ and the FCC⁴ that the Commission should consider establishing a permissible range of preferred outcomes for interconnection agreements. TRACER agrees that identification of a range of permissible results may be an effective way to determine if all portions of an interconnection agreement are consistent with the public interest, convenience, and necessity.

TRACER supports a uniform range of permissible outcomes for several reasons. First, establishing such a range would limit the effect of the incumbents' bargaining positions on the outcome of contract negotiations and would equalize the disparate bargaining power between the new entrants and incumbents. The Act's interconnection provisions favor voluntary negotiations for interconnection agreements. For any negotiation to produce a fair outcome, the parties must at least be in comparable positions. Second, a Commission-determined review of preferred outcomes would assist the states in their review process of the Act under Sections 251 and 252 of the Act. Third, establishing a

³ c.g. GTE Corporation and TGC Communications

⁴ See, the NPRM, p. 13, Paragraph 31.

range of results could provide flexibility and certainty to the parties, leading to more flexible and efficient agreements which in turn could lead to lower prices and greater consumer benefits.

3. Pricing guidelines for interconnection should be based on the total service long run incremental costs (TSLRIC) which is the proper economic cost for unbundled network elements.

The NPRM sought comments on how the "cost plus reasonable profit" statutory language for pricing network elements should best be interpreted. A substantial area of controversy in the parties' comments focus on the Act's requirements for the pricing of interconnection services. The determination of "costs" is critical in order to establish pricing for physical interconnection. While TRACER recognizes that significant differences in costing methodologies exist at the state level, it agrees with Teleport Communications Group, Inc. that it would be in the public interest for the Commission to create a national, consistent standard for the costing and pricing of interconnection. This would avoid counterproductive controversy over costing methodology at the state level but could preserve the opportunity for local exchange companies to prove recoverable costs which differed from the nationally established standard.

TRACER would define interconnection narrowly to cover only those service components essential to call completion. In TRACER's view for interconnection to be provided efficiently, at least in the static sense, prices should reflect TSLRIC, and be

close to TSLRIC as possible.⁵ In comments filed in the United Kingdom entitled Framework For Effective Competition, US West International cogently explained:

"Interconnection should be tightly defined as those service components essential to call completion. Interconnection is a vital part of telecommunications public policy because it preserves 'any-to-any' calling and a seamless network. Operators would be recompensed for costs actually incurred in interconnection; but that is all. Interconnection is a means of surmounting the externality that an originating operator, in order to complete their customer's transaction, may need to terminate their call on another operator's network.'...The tariff for interconnection between originating and terminating network operators should be calculated through a 'bottoms up' approach which identifies the cost drivers and their long run incremental costs, (LRIC), including the appropriate contribution to the cost of capital. There should be no arbitrary markup to this LRIC, as any attempt to add common or overhead costs will distort the market, serve as a barrier to effective competition and operate against the public good of 'any-to-any calling.'" (p. 2, see Attachment A)

TRACER supports the rationale of US West International. Furthermore, TRACER urges the establishment of a national costing methodology to be used in this and future proceedings that would be transparent, rational, stable, consistent, and understandable. One way to do this would be to develop "proxy" or "default" cost estimates computed on the basis of averaged costs, by defined

⁵ See Steven R. Brenner & Bridger M. Mitchell, *Economic Issues in the Choice of Compensation Arrangements*, March 4, 1996 ("Brenner and Mitchell") at 21. Brenner and Mitchell use the term "marginal" cost, but note at page 25, note 25, that their paper does not specifically address whether the costs to be measured should be short-run or long-run, marginal or service incremental. TRACER believes the proper measure should be TSLRIC.

geographic area, for the provision of the service in question. TRACER would urge the FCC to develop a costing methodology that substantially reduces the controversies inherent in reviewing and challenging existing local exchange company costs models which are frequently nothing more than "black box" incomprehensible models. The identification and establishment of appropriate cost guidelines which provide the local exchange companies with the reasonable opportunity to recover their actual, provable costs and would minimize any cost "gaming" would operate in the public interest.

4. The FCC rules should continue to recognize and support as a preferred outcome "bill and keep" as a call completion compensation methodology.

Several of the incumbent local exchange companies⁶ contest a bill and keep arrangement as violative of their Fifth Amendment rights. TRACER urges the FCC to reject these arguments and to continue to support the viability of a bill and keep approach as a preferred outcome. This is consistent with the Act (Section 252(d)(2)(b)(i)) and existing Washington law. The WUTC in its Fourth Supplemental Order in Docket Nos. UT-94-1464-46, et al., recognized the benefits of bill and keep and the adverse market consequences of usage-sensitive interconnection arrangements. A bill and keep transport and termination mechanism should be maintained, particularly as it is the only explicit mechanism endorsed by the Act.

⁶ i.e., GTE and US West

In TRACER's view, the reciprocal nature of a bill and keep arrangement provides sufficient, just and reasonable compensation for the termination of traffic and does not constitute an unconstitutional "takings." As the WUTC stated in its Fourth Supplemental Order:

"There is a reciprocal exchange of traffic [using bill and keep] in which each company receives something of value...bill and keep is more consistent with the structure of cost occurrence than are the access charges that the incumbents propose...The principal costs of terminating calls relates to the provision of the line to the subscriber's premise. The cost of this line is largely insensitive to the volume and duration of calling...It is simply wrong to suggest that the bill and keep procedure means that calls are being terminated for free. The termination function is paid for, not by the originating company, but by the end user customer in his flat monthly charge. That charge covers all access to and from the public switched network. Under bill and keep a company is compensated for most call terminations by its own customer." Id., p. 36-37

In sum therefore, TRACER urges the Commission to reject any incumbent arguments which will undermine the utility of a bill and keep compensation mechanism in the rules to adopted by this Commission.

5. Conclusion.

In conclusion, TRACER members have a strong consumer interest in the adoption of truly competitive rules which will allow market forces to operate. TRACER has highlighted those

aspects of this rulemaking of most concern to it,⁷ in responding to positions advocated by other parties in the opening comments.

TRACER appreciates the opportunity to have its voice heard and it urges the FCC to never lose sight of the ultimate objective in this docket, which is to develop rules to provide real consumer benefits which only effective competition can bring.

Respectfully submitted,

ATER WYNNE HEWITT DODSON & SKERRITT, P.C.

By: *Judith A. Endejan*
Arthur A. Butler
Judith A. Endejan
Attorneys for TRACER

⁷ TRACER will not address either the issue of federal preemption of state authority of interpretation of Section 251 to avoid payment of existing access charges, as TRACER has no position on how these two issues will operate either to benefit or deter the development of competition.

A Framework for Effective Competition

A response to OFTEL's
consultative document from

U S WEST International

- "A" -

Executive Summary

The great variety of telecommunications services can, for the purpose of regulatory policy, be divided into two categories: interconnection and retail.

"Interconnection" should be tightly defined as those service components essential to call completion. Interconnection is a vital part of telecommunications public policy because it preserves "any-to-any" calling and a seamless network. Operators should be recompensed for costs actually incurred in interconnection; but that is all. Interconnection is a means of surmounting the externality that an originating operator, in order to complete their customer's transaction, may need to terminate their call on another operator's network.

The tariff for interconnection between originating and terminating network operators should be calculated through a "bottom up" approach which identifies the cost drivers and their long run incremental cost (LRIC), including the appropriate contribution to the cost of capital. There should be no arbitrary mark-up to this LRIC, as any attempt to add common or overhead costs will distort the market, serve as a barrier to effective competition and operate against the public good of "any to any" calling.

All other services are "retail" and operators should recover their overhead and other costs in this market, where competition will force them to allocate their costs in the most efficient manner. In general, operators should have the freedom to tailor their prices to the market, subject to competition and fair trading rules. However there may be a short-term need, as competition develops, for regulatory action to prevent dominant operators exploiting their market power in parts of the market which are nominally competitive but which are, in practice, dominated by one or two operators.